

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 2/23/2012

Action Requested By:
Fleet

Agenda Item Type
Resolution

Subject Matter:

Resolution for the City of Huntsville to enter into an Auction Agreement with Fowler Auction and Real Estate Service, Inc.

Exact Wording for the Agenda:

Agreement between the City of Huntsville and Fowler Auction and Real Estate Service, Inc. to sell at public auction City owned equipment and property no longer utilized or needed by the City of Huntsville.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

In order to dispose of under utilized, unneeded, damaged, inoperable property/equipment by the City of Huntsville in an attempt to obtain the highest possible price for said property/equipment.

Associated Cost: n/a

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: 

Date: 2/17/2012

ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Fleet**

Council Meeting Date: **2/23/2012**

Department Contact: **Mike Blankenship**

Phone # **256-883-3955**

Contract or Agreement: **Fowler Auction & Real Estate Service, Inc.**

Document Name: **Auction Agreement**

City Obligation Amount:

Total Project Budget:

Uncommitted Account Balance:

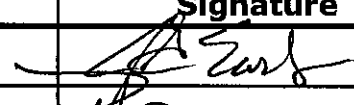


Account Number:

Procurement Agreements

Select...	Select...
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Grant-Funded Agreements

Select...	Grant Name:

Department	Signature	Date
1) Originating		2/17/12
2) Legal		2-21-12
3) Finance		2/22/12
4) Originating		
5) Copy Distribution		
a. Mayor's office (2 copies)		
b. Clerk-Treasurer (Original & 2 copies)		
c. Legal (1 copy)		

RESOLUTION NO. 12-__

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama that the Mayor be, as is hereby authorized to enter into an Agreement between Fowler Auction & Real Estate Service, Inc., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Agreement between the City of Huntsville and Fowler Auction and Real Estate Service, Inc." consisting of four (4) pages including exhibits, and the date of February 23, 2012, appearing on the margin of the first page, together with the signature of the President or Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

BE IT FURTHER RESOLVED that the Mayor of the City of Huntsville, for and as act of the City of Huntsville, is hereby authorized, requested and directed to enter into an agreement with Fowler Auction & Real Estate Service, Inc. to sell at public auction City owned equipment and property no longer utilized or needed by the City of Huntsville. In order to dispose of underutilized, unneeded, damaged, inoperable property/equipment by the City of Huntsville in an attempt to obtain the highest possible price for said property/equipment.

ADOPTED this the 23rd day of February, 2012.

President of the City Council
of the City of Huntsville, Alabama

APPROVED this the 23rd day of February, 2012.

Mayor of the City of Huntsville
Huntsville, Alabama

President of the City Council of
The City of Huntsville, Alabama

Date: Feb. 23rd 2012



8719 Highway 53 · Toney, Alabama 35773
(256) 420-4454 · Fax (256) 420-4707



STATE OF ALABAMA

CITY OF HUNTSVILLE, ALABAMA

AGREEMENT

This Agreement is entered into on this the 23rd day of February, 2012, by and between City of Huntsville, Alabama (hereinafter "City of Huntsville") and Fowler Auction & Real Estate Service, Inc. (hereinafter "Fowler").

In consideration of the obligations and the payments to be made hereunder, it is agreed by and between the parties as follows:

1. City of Huntsville authorizes Fowler to sell at public auction, personal property consigned from this date forward ("Property") under the terms of this Agreement.
2. The status of Fowler while it performs under this Agreement shall be as an independent contractor and it is understood and agreed that Fowler is not an agent and is not a partner of City of Huntsville. It is further understood and agreed that Fowler has no authority to act for City of Huntsville.
3. Fowler will attempt to obtain the highest price possible. All items checked-in will be sold absolute unless prior arrangements are made with the consignment auction manager. The Property will be sold to the highest bidder without reserve unless City of Huntsville is present when Property is auctioned. City of Huntsville must have a

representative present at time of auction or prior arrangements made to "no sale" an item; otherwise it will be sold to the highest bidder without reserve. All miscellaneous items (\$200.00 value or less) will be sold absolute regardless of price. Fowler determines whether items are miscellaneous.

4. City of Huntsville will pay Fowler a commission on each item of the Property sold at auction on the following rate schedule.

\$1,001.00 and up	6%
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\$0 - \$1000.00	10%
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5. City of Huntsville will pay Fowler full commission on the Property if sold by Daily Sale.
6. In addition, City of Huntsville authorizes Fowler to collect and retain a five percent (5%) buyer's premium on each item of Property sold.
7. Any transportation costs incurred by Fowler in moving the Property to the auction site will be borne by Fowler.
8. Fowler will remit to City of Huntsville the net proceeds of the auction (less commission) within 30 days of receipt.
9. City of Huntsville hereby warrants that it is the owner of each item of the Property, that the Property is free and clear of all liens unless City of Huntsville advises Fowler otherwise in writing, and that City of Huntsville has complete power of sale.
10. City of Huntsville agrees to indemnify and hold Fowler harmless from and against any and all claims, damages, losses, liabilities, and expenses (including all attorney's fees) relating to the breach or alleged breach of City of Huntsville's obligations, representations or warranties herein. City of Huntsville representations, warranties

and indemnity herein shall survive completion of the transaction contemplated by this Agreement.

11. Fowler agrees to defend, indemnify and hold harmless City of Huntsville, its officials, employees and agents from and against any and all claims, damages, losses, liabilities and expenses, including all attorney's fees, arising out of or related to the Agreement caused solely by the act or omission of Fowler, its employees and agents, specifically including but not limited to, claims by third parties of misrepresentations made in the auction of the Property which is the subject of this Agreement. The obligations under this paragraph shall survive completion of transactions contemplated by this Agreement or the termination of this Agreement by either party.
12. City of Huntsville warrants and guarantees that there are no known hidden defects or chemical toxins in items to be sold.
13. City of Huntsville is responsible for fuel, oil and the winterizing of each motorized item.
14. City of Huntsville authorizes Fowler to start and move equipment within the auction area.
15. If City of Huntsville requests the right to work on equipment within the auction area, Fowler will not be responsible for any injury or damage to person or property. Any costs incurred by Fowler for said work will be deducted from the proceeds due City of Huntsville.
16. City of Huntsville agrees to hold Fowler, its agents or representatives harmless in the event any item is sold to highest bidder without reserve.

17. City of Huntsville understands it remains its responsibility to protect its own interest in said items against loss of fire or theft while on auction premises and agrees to hold Fowler harmless from said loss by fire or theft unless such loss is caused by the act or omission of Fowler or its agents or employees.
18. Fowler is authorized to sign bills of sale on the items consigned to Fowler Auction and Real Estate.
19. This Agreement is valid for all items checked in on consignment from this date forward by City of Huntsville and/or its departments.
20. City of Huntsville or Fowler may cancel this Agreement at any time by giving written notice to the other party.

CITY OF HUNTSVILLE

By: _____

ATTEST:

FOWLER AUCTION & REAL ESTATE
SERVICE, INC.

By: Ang Bth

Its MANAGER

8719 Highway 53 ~ Toney, Alabama 35773
(256) 420-4454

ATTEST:

Bucky Rice